

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 412 of 1999

For Approval and Signature:

HON'BLE MR.JUSTICE H.K.RATHOD

- =====
1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the concerned : NO
Magistrate/Magistrates, Judge/Judges, Tribunal/Tribunals?

MJ SONI

Versus

DDO KUTCH

Appearance:

1. Special Civil Application No. 412 of 1999
MR AS SUPEHIA for Petitioner No. 1
MR HS MUNSHAW for Respondent No. 1-2

CORAM : HON'BLE MR.JUSTICE H.K.RATHOD

Date of decision: 01/09/2003

ORAL JUDGEMENT

Heard learned advocate Mr. A.S.Supehia for the
petitioner and learned advocate Mr. H.S.Munshaw
appearing on behalf of the respondents.

2. In the present petition, according to the petitioner he is serving as Talati-cum-Mantry and he was suspended by order dated 2.5.1995. During the pendency of suspension the request was made by the petitioner to revise the suspension allowance in light of revision of pay scale of 1998 having effect from 1.1.1996. The said request has been rejected by letter dated 5.11.1998 and, therefore, the petitioner has challenged such denial of revised suspension allowance w.e.f. 1.1.1996. The respondents have filed reply and come out with a case at page 22 vide letter dated 19.2.1998 that if the petitioner is agreeing to the conditions mentioned therein, petitioner will be reinstated by the respondents. Mr. A.S.Supehia having some objection in respect to item No.3 of the said condition that during the pendency of departmental inquiry and criminal prosecution petitioner will not raise any objection or demand to regularise his suspension period. He also submitted that at page 23, in the proforma of such undertaking specifically made it clear that whatever further outcome of the departmental inquiry and criminal prosecution which will be binding to the petitioner, therefore, undertaking has not been given by the petitioner. It is made clear after perusal of the letter dated 19.2.1998 of Deputy Secretary of the respondent department and proforma which has been annexed at page 23, according to my opinion, the undertaking which is required to be filed by the petitioner to the effect that as per this letter, during the pendency of the departmental inquiry/criminal prosecution, the petitioner shall not raise any objection or make any demand to regularise his suspension period but subsequent to that of the decision from the departmental inquiry or criminal prosecution, it is open for the petitioner to raise dispute or demand about regularisation of his suspension period. This being a real interpretation of the said item No.3 having the objection by the petitioner, in short it is clear that during the pendency of the departmental inquiry/criminal prosecution naturally no objection or demand will be raised by the petitioner but after completion of the same, the right has been accrued in favour of the petitioner to claim the benefit under the Pay Rules, 1998 and respondents will require to consider whether petitioner is entitled any revised suspension allowance during the period of suspension or not.

3. In view of this fact, learned advocate Mr. A.S.Supehia has submitted that now petitioner will give an undertaking as required at page 22/23 to the

respondents within a period of 15 days from today but he requested that some suitable directions may be issued to the respondents so that they may consider such application and they may revoke the suspension order as per letter at page 22/23 within some reasonable time.

4. In view of this, it is open for the petitioner to apply to the respondents with a request to revoke the suspension order within a period of 15 days from today. As and when the respondents will receive the copy of such application from the petitioner, it is directed to the respondents to consider the application of the petitioner in light of letter dated 19.2.1998 which is at page 22 (Annexure to the affidavit-in-reply) and pass appropriate orders in accordance with law within a further period of 15 days from the date of receiving the copy of such application from the petitioner.

5. In view of the above observations and directions, present petition is disposed of. Rule is discharged.

Direct service permitted.

(H.K.Rathod, J)

Jayanti*